

California Department of Consumer Affairs

Legal Guide H-1

REGULATION OF HOMESTEAD FILING SERVICES

September 1996

Homestead filing services are regulated by California law.

"Homestead filing services," are defined as individuals or companies who offer to prepare homestead declarations. Attorneys, and those who work for attorneys, are not covered by this law. A homestead declaration is a document that claims a particular house as a homestead. When the document is signed by the owner and recorded in the county where the house is located, it helps protect the house against loss to creditors.

Similar protections are also enjoyed by homeowners who have not recorded a homestead declaration. However, these protections are not as extensive as those provided by a properly recorded homestead declaration. The homestead filing service law was adopted because some homestead filing services were misrepresenting the benefits provided by recorded homestead declarations.

This law does several things. It requires certain disclosures and it prohibits certain misstatements. It also defines the services that must be provided by a homestead filing service, and it limits the fees that can be charged.

The law requires that a homestead filing service handle the entire task of completing and filing the homestead declaration, including payment of all notary and recording fees.

The law states that the declaration of homestead must be recorded in the appropriate county within 10 days after it is signed before a notary public.

The law also limits the fee that can be charged for the service to \$25, including notary and recording fees. The fee may not be requested or received until after the homestead declaration is recorded. This may mean that the amount that a consumer pays for a homestead declaration will be paid to a third-party "escrow," who will disburse the money to the homestead filing service only after the homestead is recorded.

To help assure that homeowners are not misled about the need for filing a homestead declaration or the protection it provides, a homestead filing service must include a prescribed disclosure in every advertisement, promotional material and other offer made before the time when the owner is obligated to pay for the service. In the case of an oral solicitation or

broadcast ad, the disclosure must be recited at the beginning of the presentation. In the case of a printed ad or other promotional material, the disclosure must be printed in 12-point boldface type and enclosed in a box formed by a heavy line. The following message must be disclosed.

THIS HOMESTEAD FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY.

YOU DO NOT HAVE TO RECORD A HOMESTEAD DECLARATION.

RECORDING A HOMESTEAD DECLARATION DOES NOT PROTECT YOUR HOME AGAINST FORCED SALE BY A CREDITOR. YOU MAY WISH TO CONSULT A LAWYER ABOUT THE BENEFITS OF RECORDING A HOMESTEAD DECLARATION.

IF YOU WANT TO RECORD A HOMESTEAD, YOU CAN FILL OUT A HOMESTEAD DECLARATION FORM BY YOURSELF, HAVE YOUR SIGNATURE NOTARIZED AND HAVE THE FORM RECORDED BY THE COUNTY RECORDER.

The homestead filing service law also makes it unlawful for a homestead filing service to make certain statements about the homestead law or the service it is offering. All untrue or misleading statements are prohibited. In addition, the following representations are prohibited:

- That the preparation or recording of a homestead declaration will prevent the forced sale of a judgment debtor's dwelling.
- That the preparation or recording of a homestead declaration will prevent the foreclosure of a mortgage, deed of trust, or mechanic's lien.
- That the protections of the homestead law are available only to persons who prepare or record a homestead declaration.
- That a homestead declaration is in any way related to obtaining a homeowner's exemption to real property taxes.

- That the preparation or recording of a homestead declaration is required by law.
- That the homestead filing service has a file or record covering a person to whom a solicitation is made.
- That the homestead filing service is, or is affiliated with, any charitable or public service entity, unless it is affiliated with a charitable organization which has qualified for a tax exemption under section 501(c)(3) of the Internal Revenue Code.
- That the homestead filing service is, or is affiliated with, any government entity. (The law states that it would be a violation of this rule to make any misleading use of a government seal or emblem, or to use any business name that includes the word "agency," "bureau" or other title usually associated with a government body, or to use an envelope that simulates an envelope containing a government check, tax bill or other notice.)

The law is found at Business and Professions Code section 17537.6. Any violation is a misdemeanor. (Bus. & Prof. Code, sec. 17534.) In addition, the attorney general or a district attorney, and certain city attorneys, may recover a civil penalty of up to \$2,500 for each violation. (Bus. & Prof. Code, sec. 17206.) Suits for an injunction prohibiting violations may be maintained by most law enforcement agencies and individuals. (Bus. & Prof. Code, secs. 17203, 17535.)

Attorneys, and those who work for and who are supervised by an attorney, are not covered by the law. Accordingly, the character or scope of the services that are furnished by an attorney, the charges for those services, and the attorney's representations relating to those services, are not covered by the homestead filing service law.

This law resulted from abuses by some homestead filing services. Some misrepresented the benefits of filing a homestead declaration. Some exaggerated the benefits of filing a homestead declaration, and some concealed the existence of the automatic homestead protection.

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Should you record a homestead declaration?

The filing of a declared homestead does add to

the homestead protection that the law automatically provides to all homeowners. While the typical homeowner need not file a declared homestead to enjoy some basic homestead protection, homeowners who are in financial trouble, or who expect to be in financial trouble, should file a homestead declaration.

The following are some of the reasons why a homeowner who is or expects to be in financial trouble should file a declared homestead and not rely exclusively on the automatic homestead:

- The owner who records a declared homestead can choose which of several residences will be protected.
- The protection that is provided by a declared homestead will continue to apply to that residence even if the owner moves. If a declared homestead has not been recorded, the automatic homestead protection may be lost if the owner moves.
- The protection that is provided by a declared homestead will apply to the proceeds of a voluntary sale. If a declared homestead has not been recorded, the automatic homestead protection may be lost in the event of a voluntary sale of the house. Instead, the proceeds of a voluntary sale of the house will go to the judgment creditor or creditors.
- If a declared homestead has been recorded, the law is clear that the proceeds of sale (up to the dollar limits of the homestead law) can be used to purchase another house.
- Only if a declared homestead has been recorded will the proceeds of a voluntary sale assuredly be protected after they are used to purchase another house; only then will the protection given to the first house be carried over to the second.

Neither the automatic homestead nor the declared homestead will protect a homeowner against the loss of his or her home to a secured creditor -- such as the lender who has financed the original purchase, or a lender who extended a second mortgage loan, or to a contractor, subcontractor or laborer who has filed a mechanic's lien claim. The homestead protection, however, extends to most other kinds of creditors.

Homeowners who are in financial trouble, or those who expect that they may encounter financial

trouble, should consult an attorney for advice on how to protect their home. Homeowners can also prepare and file their own homestead declaration by carefully following a good "do-it-yourself" guidebook.

The homestead law is found at Code of Civil Procedure sections 704.10 - 704.995.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by:

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